BOLIVIA

TRADE SUMMARY

The U.S. goods trade deficit with Bolivia was $122 million in 2008, an increase of $37 million from $85 million in 2007. U.S. goods exports in 2008 were $389 million, up 40.1 percent from the previous year. Corresponding U.S. imports from Bolivia were $511 million, up 40.9 percent. Bolivia is currently the 105th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bolivia was $262 million in 2007 (latest data available), down from $282 million in 2006.

IMPORT POLICIES

Tariffs

Bolivia has a three-tier tariff structure. Capital goods designated for industrial development may enter duty-free, non-essential capital goods are subject to a 5 percent tariff, and most other goods are subject to a 10 percent tariff. However, in October 2007, the administration of President Evo Morales enacted a Supreme Decree that reduced rice and corn tariffs to zero.

Nontariff Measures

Supreme Decree 27340, dated January 31, 2004, banned the importation of certain types of used clothing, including old, destroyed, or useless articles of apparel, used bedding and intimate apparel, used shoes, and certain destroyed or useless textile articles (rags, cords, string, and rope). U.S. industry reports that imports of other types of used clothing, while not banned from import into Bolivia, may be subject to other nontariff trade barriers.

According to industry officials, Bolivian customs often does not agree with official invoices that are presented. In those instances, importers are typically expected to pay tariffs based on whatever valuation the local customs authority deems to be ‘fair value’ for the shipment. U.S. officials are continuing to monitor the situation.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures

Bolivia's National Animal and Plant Health and Food Safety Service *(Servicio Nacional de Sanidad Agropecuaria e Inocuidad*) or SENASAG appears to apply some standards differently to third countries than to fellow Andean Community members. Bolivia continues to ban U.S. live cattle, beef and beef products based on Bovine Spongiform Encephalopathy (BSE) restrictions that are inconsistent with the May 2007 World Organization for Animal Health (OIE) classification of the United States as a "controlled risk" country for BSE. OIE standards specify that trade in live cattle and in beef and beef products of a "controlled risk" country should be permitted, provided that the appropriate specified risk materials are removed from the beef. U.S. officials continue to engage Bolivia’s authorities in pursuit of science-based import requirements with respect to such trade. Bolivia, along with Ecuador, Peru, and an Andean Community representative, participated in an August 2008 trip organized by the U.S. Department of Agriculture to evaluate the U.S. live cattle system in hopes of improving access for U.S. live cattle to these nations. SENASAG is underfunded and is having difficulty carrying out its mission. There has been government pressure to involve SENASAG in political affairs and to distance SENASAG from U.S. technical assistance.

GOVERNMENT PROCUREMENT

Government expenditures account for a significant portion of Bolivia's Gross Domestic Product. The central government, sub-central governments (state and municipal levels), and other public entities remain important buyers of machinery, equipment, materials, and other goods and services. In an effort to encourage local production, the Bolivian government changed its procurement and contracting of service rules in July 2007 (Supreme Decree 29190, dated July 11, 2007). Government procurements under $1 million in value must be awarded to Bolivian producers. Importers of foreign goods can participate in these procurements only when locally manufactured products and service providers are unavailable or when the Bolivian government does not select a domestic supplier; in such cases, the government can call for international bids.

Bolivia is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 1999, the Bolivian government established the National Intellectual Property Rights Service (SENAPI) to oversee IPR issues. The organization initiated a USAID-supported restructuring process in early 2003, but that process has not yet been completed. Currently the office is focused on the registration of traditional knowledge.

Industry and the U.S. Government continue to have concerns over protection and enforcement of IPR in Bolivia.

Supreme Decree number 29004, issued in January 2007, establishes a "Prior Announcement" requirement for pharmaceutical patents to allow the government, with the input of various interest groups, to determine whether the issuance of a pharmaceutical patent would "interfere with the right to health and access to medicines." Industry asserts that this additional step in the patent application process increases delays, raises questions of confidentiality of proprietary information, and creates an additional requirement to the process for obtaining a patent.

Enforcement

The 1992 Copyright Law recognizes copyright infringement as a public offense, and the 2001 Bolivian Criminal Procedures Code provides for the criminal prosecution of IPR violations. Despite these legal protections, IPR enforcement efforts are sporadic. Deterrent penalties need to be applied in civil and criminal cases. Border enforcement also remains weak. Video, music and software piracy rates are among the highest in Latin America, with the International Intellectual Property Alliance estimating that piracy levels in 2006 reached 100 percent for motion pictures, 90 percent for recorded music and 82 percent for software piracy.

INVESTMENT BARRIERS

In the mid-1990s, the Bolivian government implemented its "capitalization" (privatization) program. The program differed from traditional privatizations in that the funds committed by foreign investors could only be used to acquire a 50 percent maximum equity share in former state-owned companies.

Bolivia has signed bilateral investment treaties with several countries, including the United States. The United States–Bolivia Bilateral Investment Treaty (BIT) entered into force in June 2001. The treaty guarantees recourse to international arbitration, which may permit U.S. companies to obtain damages in disputes that cannot be adequately addressed in the Bolivian legal system, where judicial processes are alleged to be prolonged, non-transparent, and occasionally corrupt. In 2006, however, the new Bolivian administration announced its intention to renegotiate its bilateral investment treaties. In October 2007, Bolivia became the first country ever to withdraw from the International Center for the Settlement of Investment Disputes (ICSID), a World Bank body that referees contract disagreements between foreign investors and host countries.

President Morales nationalized the telecommunications industry in May 2008, and the gas transport industry in June 2008. He has publicly announced that additional industries, including electricity, water, and the transportation sector, could also be nationalized.

Article 359 of the Bolivian Constitution of 2009 stipulates that all hydrocarbon deposits, whatever their state or form, belong to the government of Bolivia. No concessions or contracts may transfer ownership of hydrocarbon deposits to private or other interests. The Bolivian government exercises its right to explore and exploit hydrocarbon reserves and trade related products through the state-owned firm Yacimientos Petrolíferos Fiscales Bolivianos (YPFB). The law allows YPFB to enter into joint venture contracts for limited periods of time with national or foreign individuals or companies wishing to exploit or trade hydrocarbons or their derivatives.

In May 2005, Bolivia adopted Hydrocarbons Law 3058, which required producers to sign new contracts within 180 days and imposed a 32 percent direct hydrocarbons tax on production. The law required operators to turn over all of their production to the state and re-founded YPFB, assigning the state responsibility for controlling the entire hydrocarbons production chain. In May 2006, the Bolivian government issued Supreme Decree 28701. The Decree generally reinforced the provisions of the 2005 Hydrocarbons Law – claiming state ownership of production, requiring companies to sign new contracts within 180 days, and mandating YPFB to take control of the hydrocarbons chain. YPFB signed new contracts with production companies in October 2006 and took control over the distribution of gasoline, diesel, and LPG to gas stations.

The state also had a legal mandate to gain a 51 percent stake in all of the companies operating in the sector that were part of the privatizations (called "capitalization") that took place in the 1990s. Leading up to May 2008, this process was still incomplete, and private companies owned a majority of shares in Chaco (Pan American Energy), Andina (Repsol), and Transredes, the principal pipeline operator, partially owned by Ashmore Energy International (AEI), headquartered in Texas, and Shell. In May 2008, President Morales announced that the government would obtain a 51 percent ownership control over these three capitalized companies, as well as outright ownership of the German/Peruvian controlled Bolivian Logistical Hydrocarbon Company (CLHB), which had been fully privatized in the 1990s. Except for CLHB, which considers the Bolivian government's move expropriation, the other three companies all appear willing to sell the necessary shares to the government; the real sticking point is who will have operational control. By October 2008, the government had acquired back a majority of the shares in the capitalized companies and had also fully nationalized the pipeline operator Transredes.

The "nationalization" of the hydrocarbon industry remains incomplete and YPFB is struggling to carry out its broad mandate due to a lack of technical capacity and resources. Regional strikes have occurred and complaints of indiscriminate contracting, lack of a coordinated policy, and logistical incompetence have all been aired publicly. Moreover, from late 2007 through 2008, diesel shortages have been commonplace (especially in Santa Cruz) and shortages of liquefied natural gas (LNG) canisters are becoming more frequent throughout the country.

Outside the hydrocarbons sector, foreign investors face few legal restrictions, although a possible change to the mining code could require all companies to enter into joint ventures with the state mining company, COMIBOL. The new Bolivian constitution, as approved by national referendum in January 2009, also includes requirements for state involvement in natural resource companies. The constitution calls for limitations on foreign companies' access to international arbitration in the case of conflicts with the government and states that all bilateral investment treaties must be renegotiated to adjust to the new provisions. However, until a treaty is renegotiated or terminated, the constitution protects the integrity of all international agreements.